IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) CIVIL SECOND APPEAL No. 370 of 2004
(NAVARATAN MAL V/S SMT.SUGNI DEVI & ANR.)

(2) CIVIL SECOND APPEAL No. 371 of 2004
(NAVARATAN MAL V/S SMT.SUGNI DEVI & ANR.)

(3) CIVIL SECOND APPEAL No. 372 of 2004
(NAVARATAN MAL V/S SMT.SUGNI DEVI & ANR.)

Mr. PS CHUNDAWAT, for the appellant / petitioner

Date of Order : 22.11.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

These three appeals have been filed by the appellant, against three different judgments and decrees passed by the learned lower Appellate Court, allowing the three appeals.

The parties in the three litigations are different, except that the appellant Navratan Mal and Sugni Devi is common party in all the litigation. However, in view of close involvement of the controversy in the three litigations, the three appeals are being decided by this common order.

The first litigation was initiated by the present appellant, by filing a suit on 13.7.87, against Sugni Devi, the only defendant. The suit was filed for perpetual

injunction, alleging to have purchased a house from Gigi Devi on 29.3.86, and alleging that in the West there was a 'Thala' of Pratapmal Jabarmal, who had expired issueless and being in nobody's possession, is being used as road. It was also alleged that in the western wall there is a door and Jangla, which existed for the last 25 years. Then, it was alleged that the defendant wanted to purchase the western land, in which regard objection has been filed, and it has transpired that Panchayat has sold the land, for which separate proceedings would be initiated. However, it was prayed that Jangla and door being 'Kadimi' the defendant has no right to close them, and therefore, injunction was prayed. This suit was contested by the defendant, on the ground that the defendant has not trespassed on any land, she is not aware as to when did the plaintiff purchase the property, and it was pleaded that the defendant has been given plot by Gram Panchayat measuring 22 ft. towards north, 15 ft. towards south, 80 ft. towards east, and 97 ft. towards west, whereon she had constructed a house, and that, in the Patta granted by Gram Panchayat there is no mention about any door or Jangla. Not only that even in the site plan annexed with the registered sale deed of the plaintiff, no such Jangla has been shown. It was also pleaded that the defendant's land was lying open to the extent of 3ft. whereon the defendant stored the construction material, and that before filing of the suit, the plaintiff gave physical beating to the defendant, for

which criminal case had been lodged in the police station. It was denied that there is any Kadimi Jangla. Inter-alia with these pleadings it was prayed, that the suit be dismissed. The learned trial court decreed the suit, inter-alia finding, that the Patta granted to the defendant has already been cancelled, and plaintiff has given evidence about existence of window and Jangla. It was also found, that the defendant has already filed a suit against Gram Panchayat and the plaintiff, and the plaintiff has also filed a suit against defendant and Gram Panchayat etc., regarding the land in question, the defendant has no right to close the door and the window, therefore, the suit was decreed. In appeal, being Appeal No. 34/95, the learned lower Appellate Court reversed the judgment, inter-alia finding, that from the sale deed Ex. 2, whereby the plaintiff purchased the land, it is clear that it does not substantiate the existence of Jangla and windows, as in the west land of Pratapmal is shown, and no such Bari and Jangla are shown, and therefore, even if after purchase, the plaintiff has erected such Jangla and Bari, he does not acquire any right of easement. It was of course also observed, additionally, that the plaintiff has not appeared in the witness box, and instead his power of attorney has appeared, and referring to some old judgments of Hon'ble the Supreme Court, it was considered, that power of attorney could not be examined in place of the plaintiff. Assailing this judgment and decree Appeal No.372 has been

filed by the plaintiff, contending inter-alia that the allotment of land in favour of Sugni Devi has already been cancelled, and even after judgment of this Court, fresh refusal of grant of Patta has become final, and therefore, the suit could not be dismissed. It is also contended, that the stand of Sugni, about the land having been purchased by her father in law, from Pratapmal, could not be considered, in absence of pleading, and prayer for amendment of the pleading had been refused right upto this Court.

Then, Appeal No. 371 arises from out of Suit No. 132/87, filed by the appellant Navratan Mal on 3.11.1987, which was filed against the Gram Panchayat, the then Sarpanch, Sugna Devi, Raichand, District Collector, Panchayat Samiti and Executive Engineer, P.W.D. In this suit case of the plaintiff was, about having purchased the house, wherein there was one door and Jangla in the west, and in the further west there is land in question, and Patodi Road. It was alleged that the defendants no. 3 and 4 encroached upon the portion of the land ABCD mentioned in the site plan, and when the plaintiff purchased house on 29.3.1986, he was told that objections have been filed against the encroachment, and proceedings are afoot for dispossession by defendant no. 1 and 2. It was then alleged that on 13.7.87 the defendant no.3 attempted to close the door and Jangla, whereupon Suit No. 97/87 (sic 93/87) was filed, and on obtaining copy from the Gram Panchayat it

revealed, that again notice was issued on 16.12.82, and on 21.12.82, an application was filed for regularisation, and ultimately on 5.6.1983 the land was allotted to defendant No.3 Sugni Devi, whereupon objection was filed, and it transpired that on 5.5.86, clandestinely the land has been allotted to defendant No.3, which allotment was claimed to be void and illegal for the reasons mentioned in para-4 of the plaint. This was said to be the cause of action, as on the basis of Patta, the defendant wanted to raise construction. With these averments, it was prayed, that the Patta dated 5.5.86 be declared to be illegal and void, the defendants No.3 and 4 be dispossessed, and they be injuncted from ever coming back into possession. This suit was decreed by the learned trial Court vide judgment dated 31.1.96, inter-alia finding, that it had not been shown on the side of Sugni Devi, that she was in possession for the last 25-30 years, and that Patta granted by the Panchayat has been cancelled by the Collector, which cancellation has been challenged before the Revenue Appellate Authority and also before the High Court, and it was also noticed that this defendant is not entitled to maintain encroachment, and the plaintiff is entitled to remove the encroachment. In appeal being appeal No.10/96, the learned lower Appellate Court reversed the findings of the learned trial Court, and came to the conclusion, that at the time when the plaintiff purchased the property Sugni Devi was living on the land, and therefore, it could not be Khalsa land,

while Sugni Devi claims that the house was purchased by her father-in-law, Jabarmal from Pratapmal and it was also held, that the stand of the plaintiff about existence of Jangla and Bari is not substantiated by registered sale deed Ex.3, as in the west, Pratapmal's land has been shown, therefore, if after purchase, the plaintiff has put any Jangla or Bari, on that basis he has got no right of easement. In this appeal as well, it was also held, that the plaintiff has not appeared in the witness-box, and instead Power of Attorney has appeared as witness. This judgment and decree has been assailed in appeal No.371/04, inter-alia on the same grounds as given in appeal No.372/04.

Coming to appeal No.370/04, this arises out of the suit filed by Sugni Devi, being suit No.39/92, which was filed on 15.5.92, against Panchayat Samiti, Balotra, Gram Panchayat, Pachpadra, and the appellant as defendant No.3, alleging inter-alia, that the land described in para-1 of the plaint is of the plaintiff, whereon she was living by constructing a residential house, and is in possession since 'kadim'. It was also alleged that in 1986 Gram Panchayat issued Patta, but then the High Court passed the order, that looking to the construction, the Gram Panchayat should reconsider the matter, and make allotment in accordance with law. But then no action was taken by the Gram Panchayat, rather notice was given to remove the

possession, which notice is contrary to the spirit of the judgment of the High Court. Therefore, suit for injunction has been filed, praying that the defendants be restrained from dispossessing the plaintiff, and in accordance with law, and the spirit of the judgment of the High Court, proceedings be taken for allotment in accordance with law, and the land be allotted to her. In this suit, the Gram Panchayat and Panchayat Samiti filed written-statement on 21.12.94, contending that possession of the plaintiff is not old, and is recent one, and it has wrongly obtained Patta from Gram Panchayat, which was cancelled. It was pleaded that High Court did not pass any order directing grant of Patta, but only directed to reconsider the matter, and the plaintiff being trespasser has not acquired any right, and it is not necessary for the Gram Panchayat to grant Patta. The defendant No.3 being the appellant also filed written-statement on 17.11.94, denying the plot to be of the plaintiff or to be in her kadimi possession. It was pleaded that the plaintiff obtained Patta by practicing deception, and that the High Court only permitted to reconsider the matter, keeping in view the humanitarian consideration, and thereafter the Gram Panchayat again considered the matter, and refused the request of the plaintiff in its meeting dated 27.6.92. That order was assailed in revision before the Collector, which revision was also dismissed way-back on 23.9.92. Thus, the plaintiff has no right. This suit of the plaintiff was dismissed by

the learned trial Court, finding that the plaintiff has failed to establish any right, title or interest on the land, and that after judgment of the High Court, the Gram Panchayat considered the matter after giving notice to the plaintiff, and refused the prayer vide Ex.A-1, which order was upheld in revision vide Ex.A-2. It was also found, that when the prayer of the plaintiff for grant of Patta has already been reconsidered, and has been turned down, the plaintiff no more remains entitled to be granted Patta. Inter-alia with these findings, the suit was dismissed. In appeal by the plaintiff, learned lower Appellate Court found, that according to the plaintiff, she is living in the house since when she came after marriage some 25 years ago, and that Gram Panchayat had granted Patta some 8-9 years back, in which matter she has filed writ petition, which was decided by Ex.1, thereby, Gram Panchayat was permitted to make allotment in favour of the plaintiff, while the evidence on the side of the defendant showed, that according to D.W.2, the then Sarpanch, the plaintiff is in possession of the land and he does not know, as to since when she is in possession. It was considered that the plaintiff is living on the land from long time, and despite directions of the High Court Patta was not granted to her. However, it was found that from close scrutiny of the record, it transpires that the plaintiff is in possession since before 1982-83, and on that basis Patta was granted in 1982-83. Thus, the learned trial Court was in error in

dismissing the suit. Then in this case also, it was considered, that on the side of the Navratan Mal the defendant, he has not appeared in witness-box, rather his Power of Attorney has appeared. Inter-alia with these findings, the suit was decreed, and the defendants were restrained from dispossessing the plaintiff. Assailing this judgment and decree also the appeal was filed virtually on the same grounds.

I have heard learned counsel and have gone through the records as the same has been received.

So far the appeal No.370/04 is concerned, admittedly the appellant has no right to dispossess the respondent-plaintiff, and if at all any body is aggrieved by the decree, it is the Gram Panchayat, and the appellant cannot be conceded any right to assail the decree on the grounds as detailed in memo of appeal. It is a different story, that Gram Panchayat has already filed an appeal against this decree, therefore, I am not inclined to entertain the present appeal.

So far appeals No.371 and 372 of 2004 are concerned, irrespective of the question, as to whether Sugni Devi has any right or not, over the land in question, the fact does remain, that admittedly the appellant has purchased the land vide sale deed dated 29.3.86, and by

this sale deed, admittedly, open land has been purchased by the plaintiff-appellant, and in this sale deed there is no mention about any Jangla and/or gate or windows, which obviously could not be, in view of the fact that land was open land, and since the plaintiff claims existence of such Jangla and door, they have rightly been considered to have come into existence after purchase by the plaintiff. In any case, since the suits out of which these two appeals arise, have been filed in the year 1987 itself, the plaintiff does not acquire any legal right to maintain the door and Jangla towards west, more particularly when in sale deed, towards the west, land of Pratapmal has been shown.

In that view of the matter, I do not find any sufficient ground to interfere with the impugned judgments and decrees, in these two appeals also, so as to grant the relief to the plaintiff, as claimed.

The net result is that the three appeals do not involve any substantial question of law, and thus, they are devoid of any merit, and are dismissed summarily.

(N P GUPTA),J.

/Sushil/